IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3020 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIDAS MOHANLAL PATEL

Versus

STATE OF GUJARAT, THROUGH 3RD SPECIAL LAND ACQUISITION

Appearance:

1. Special Civil Application No. 3020 of 2000

MR AR MAJMUDAR for Petitioner No. 1

MS. KATHA GAJJAR, AGP, for Respondent No. 1-4,6

DS AFF.NOT FILED (R) for Respondent No. 5

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 25/10/2001

C.A.V. JUDGEMENT

1. Laxmidas Mohandas Patel-petitioner, aged about 80 years old, a senior citizen, has filed this petition

praying for a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to grant pension and pensionary benefits to the petitioner immediately with penal interest at the rate of 18% per annum.

2.1 The facts giving rise to this petition are as under:

2.2 The petitioner was initially appointed as a teacher on 15.6.1954 in Wadi High School. The petitioner served as a teacher in Wadi High School from 15.6.1954 to 14.6.1964. Thereafter, from 15.6.1964 the petitioner was appointed as a Principal of Divyaprabha Kanya Vidyalaya. The petitioner served as a principal of Divyaprabha Kanya Vidyalaya from 15.6.1964 to 22.6.1975.

2.3 It has been submitted in the petition that from 22.6.1975 Divyaprabha Kanya Vidyalaya was closed down and has remained closed since then. The said school had remained closed from 22.6.1975 and the petitioner served in that school upto that date. The District Education Officer had appointed Narayan Vidyalaya as a custodian of the record of Divyaprabha Kanya Vidyalaya from 1975.

2.4 It has been further submitted in the petition that the petitioner was not declared as surplus teacher since there was no such provision for declaring the teacher as a surplus teacher. It is further submitted that from 1975 to 1984, the petitioner was trying to secure job elsewhere in any other school. However, the petitioner could not get suitable job till 1984. It has been submitted that after 1984, the petitioner did not try for job since the petitioner had attained the age of superannuation. It has been stated that both the schools, namely, Wadi High School and Divyaprabha Kanya Vidyalaya were government approved schools taking 100% grant. The petitioner had thus put 21 years of service and therefore the petitioner is entitled to pension and pensionary benefits.

3. As the grievance of the petitioner for pension was not redressed, the petitioner filed an application before the Gujarat Secondary Education Tribunal being application No. 776 of 1993 under Section 38 of the Gujarat Secondary Education Act. The Tribunal observed that the petitioner had rendered pensionable service i.e. the petitioner had served for 21 years and therefore he would be entitled to pension. However, due to closure of the school, the petitioner could complete only 21 years of service and thereafter also the petitioner was never

declared surplus and therefore the petitioner would be entitled to pension. The Tribunal observing that the petitioner being a fairly old person i.e. 73 years of age (at the relevant time) and having regard to the fact that he is keeping indifferent health, directed that the petitioner to make make a representation to the Commissioner, Higher Education and the Commissioner Higher Education shall decide the same immediately. With those observations the said application was disposed of by the Tribunal.

4. He further submitted that pursuant to the aforesaid judgement and order the petitioner made a representation to the Commissioner, Higher Education on 10.3.1999. A copy of the said representation is annexed at Annexure-D to this petition. The Commissioner, Higher Education, asked the petitioner to file a detailed affidavit. The petitioner accordingly submitted the affidavit on 16.10.1999. It has been submitted that after giving a personal hearing to the petitioner, the Commissioner, Higher Education, by his letter dated 4.12.1999 requested the Government to reconsider the case of the petitioner for grant of pension.

5. Thereafter, the petitioner has received a letter dated 20.2.2000 from the Commissioner, Higher Education, informing him that the Government has rejected the request of the petitioner for grant of pension. A copy of the said letter is annexed at Annexure-G to this petition.

6. Being aggrieved and dissatisfied with the aforesaid order of the Government, the petitioner has filed the present petition before this court on 5.4.2000. When the matter reached hearing before this court on 1.5.2000, this court (Coram: R.R. Tripathi, J) passed the following order:

"Rule.

2. Notice as to interim relief returnable on 27.6.2000.

3. In the meantime, respondent No. 2 is directed to take decision afresh on the representation dated 10.3.1999 made by the petitioner pursuant to the order of the Gujarat Secondary Education Tribunal ("the Tribunal" for brevity) dated 2.2.1999 and place the same on the record of this case by the returnable date. In order to see that it is possible for respondent

No. 2 to expedite the said decision making process, the petitioner is directed to furnish once again a copy of the above representation dated 10.3.1999 along with the order of the Tribunal latest by 20.5.2000."

7. I have been informed that after the petitioner has made another representation dated 18.5.2000 to the respondent authority and annexing copy of the petition as well as copy of the order, the District Education Officer, Baroda, has filed affidavit dated 14.8.2000. In that affidavit Government has stated that it has rejected the representation of the petitioner. No other reasons have been shown in the affidavit.

8. Mr. A.R. Majmudar, learned counsel for the petitioner states that in this case when the Tribunal has already passed order and the Director of Higher Education has also recommended the case, there is no reason why the Government has rejected the proposal of pension of the petitioner. He has further submitted that the order of the Government is assailable on the ground that the Government does not give any reason for rejecting the said proposal and therefore the said order is bad in law.

8.1 The learned counsel for the petitioner submitted that `speaking order' means an order speaking for itself. To put it simply, every order must contain reasons in support of it. Giving of reasons in support of an order is considered to be the important principle of natural justice. According to this, a party has right to know not only the result of the inquiry but also the reasons in support of the decision. In support of the same, learned counsel has relied on the judgements of the Apex Court in the case of M.P. INDUSTRIES VS. UNION OF INDIA reported in AIR 1966 SC 671 and SIEMENS ENGINEERING VS. UNION OF INDIA reported in AIR 1976 SC 1785.

8.2 The learned counsel for the petitioner submitted that in the first place, duty to give reasons entails a duty to rationalise the decision. Reasons therefore help to structure the exercise of discretion and the necessity of explaining why a decision is reached requires one to address one's mind to the relevant factors which ought to be taken into account. Secondly furnishing reasons satisfies an important desire on the part of the affected individuals to know why a decision was reached. Basic fairness requires that those in authority over others should tell them why they are subject to some liability or have been refused some benefit. Thirdly, rational

criticism of a decision may only be made when the reasons for it are known. In other words, if the decision is to be challenged, reasons are necessary. It also provides an important basis for appeal or review. Giving of reasons enables courts and tribunals to effectively and meaningfully exercise their appellate or supervisory powers. (Learned counsel has relied on the Article by Soli J. Sorabjee, namely, the `Duty to Give Reasons in Administrative Law' given in the book of `Democracy Human Rights and the Rules of Law Essays in Honour of Nani Palkhivala at page 94).

8.3 The learned counsel for the petitioner further submitted that administrative decisions should be reasoned so that the authorities reviewing them can find out whether they have been taken on the basis of relevant considerations or suffer from erroneous finding of fact or based on erroneous interpretation of the law. The requirement of a reasoned decision prevents the abuse of administrative discretion and ensures that the decision is impartial, objective and in public interest. The courts insist on the administrative authorities to give reasons for their decisions so that such decisions can be reviewed meaningfully. Reasoned decisions are described as speaking orders. He further submitted that the First Law Commission of the Indian Republic recommended that `in the case of administrative decisions, provision should be made that they should be accompanied by reasons. (See Law Commission of India, Fourteenth Report, Volume II, Page 694, Chapter 31) as quoted in book of `Administrative Law, 6th Edition, by Mr. S.P. Sathe, at pages 207-208. He has also relied on the judgement of the Hon'ble Supreme Court in the case of S.N. MUKHERJEE VS. UNION OF INDIA reported in AIR 1990 SC 1984 where the Hon'ble Supreme Court observed that the requirement to record reason could be regarded as one of the principles of natural justice which governed the exercise of power by the administrative authorities. Such reasons in the opinion of the Court would enable the Supreme Court or the High Courts to effectively exercise the appellate or supervisory powers.

8.4 Learned counsel for the petitioner has also submitted that the authority ought to have given reasons because giving of reasons is one of the part and parcel of rule of natural justice and therefore the order is liable to be set aside. He further submitted that the order of the Government is bad in law because the Government has not properly considered the order of the Tribunal as well as the recommendation made by the Director of Higher Education.

9. Ms. Katha Gajjar, learned A.G.P., appearing for the Government, has submitted that she relies on the affidavit of Shri C.G. Patel, Director of Education, Baroda, particularly paragraphs Nos. 4 and 5 which read as under:-

"Para 4 - With respect to averments made in paragraph 2 of the Special Civil Application, I humbly submit that the proposal regarding the pension of the petitioner has not been granted by the Commissioner of Higher Education by letter dated 28.2.2000 and the same has been communicated to the petitioner. A copy of the same is annexed hereto and marked as Annexure-I.

Para 5 - With respect to averments made in paragraph-4 of the Special Civil Application, I humbly submit that Divyaprabhat Kanya Vidhyalaya, Vadodara, has been closed due to administrative irregularities from 22.6.75. Further the petitioner was the managing trustee of the said school and therefore the record has been handed over to the Narayan High School as a custodian."

10. In my view the order of the Government is bad in law on the grounds, namely the Government has not given any reasons why the application of the petitioner for pension has been rejected. In my view giving of reasons is one of the part and parcel of the rule of natural justice and the authority has not given any reason as to why the proposal for pension is rejected and therefore the order of the Government is bad in law. The Government has also not considered the recommendation of the Director of the Higher Education as well as the order of the Tribunal. Even the Government has not considered the interim order passed by this court dated on 1.5.2000. Therefore, the order of the Government is bad in law. The petitioner is therefore entitled to writ of mandamus of this court. I, therefore, quash and set aside the communication dated 18-28/2/2000 by which the Deputy Director of Higher Education has communicated the petitioner the decision of the Government rejecting the petitioner's request for pension.

11. In this case the petitioner has retired from service on 23.6.1975 as principal. Thereafter, he has filed an application which is on record of this case which is dated 15.3.1990 to the Secretary, Education Department, Gandhinagar, regarding his pension. The

Government did not reply to the said letter nor did the Government pay pension. Thereafter, again the petitioner made a representation on 3.3.1993 to the District Education Officer, Baroda and thereafter the petitioner did not get his pension. Therefore, he filed an application No. 796 of 1993 before the Gujarat Secondary Education Tribunal. The Tribunal decided the said application in favour of the petitioner and thereafter also the petitioner made a representation to the Commissioner, Higher Education on 10.3.1999 for obtaining pension and again on 11.12.1999, 28.2.2000 and ultimately filed the present petition before this court on 5.4.2000 and today this matter has been disposed of by this court. The petitioner has contended that 26 years have elapsed after his retirement and the government should be fastened with liability of interest right from 1975 when he has retired.

12. I direct the Government to pay 10% interest on the amount of pension which is quantified by the Government from 15.3.1990 to the petitioner till the pension is paid. I also direct the Government to pay up the said pension by 31.12.2001 and if by 31.12.2001 the Government did not pay the pension, the Government will pay interest at the rate of 12% on the said amount till the amount is paid. The petition is allowed accordingly. Rule is made absolute with no order as to costs.

(K.M. MEHTA, J)

(pkn)